

## IOI-EUROPE CONFERENCE THE OMBUDSMAN IN AN OPEN AND PARTICIPATORY SOCIETY

Brussels | Senate  
1-2-3 | 10 | 2018

### **Speech on the relations between the Council of Europe and the Ombudsman community by Krista Oinonen, Chair of the CoE Drafting group on civil society and national human rights institutions (CDDH-INST)**

Dear Ms De Bruecker, Dear Mr Tyndall,

Honourable Guests, Ladies and Gentlemen,

It is a great honour for me to participate in the celebrations of the 40th anniversary of the International Ombudsman Institute and to have the opportunity to address you today, on this very prestigious occasion, in my quality of the Chair of the Drafting Group on Civil Society and National Human Rights Institutions set up within the Steering Committee for Human Rights of the Council of Europe.

Please allow me to begin with a phrase used by Mr Jaume Saura, the General Deputy of the Catalan Ombudsman, in his final conclusions at the International Ombudsman Workshop on Human Rights Challenges held in Barcelona in 2016: "An independent Ombudsman endowed with human and material resources is a key instrument to guarantee democracy and respect for the rule of law and human rights". In my view, these words perfectly resume the fundamental role that the Ombudsman institutions play in today's world in defending the values underlying the modern European society, and the Council of Europe in particular. Indeed, the Ombudsman is a guarantee and proof of the existence of a political system that respects the rule of law and fundamental human rights.

As you all know, the institution of the Ombudsman originated in Sweden at the beginning of the 19th century. My country, Finland, acquired an Ombudsman already in 1919; today, it provides oversight to ensure that public authorities and officials observe the law and fulfil their duties in the discharge of their functions. The institution then spread all over the world, proving to be a very flexible institution since it has been prudently adapted to different legal, political and cultural environments throughout the world.

While Ombudsman institutions are shaped differently in different countries depending on their constitutional, legal and political contexts, there are some common features. As the former Commissioner for Human Rights of the Council of Europe, Alvaro Gil Robles stated:

"Through their independence, flexibility and non-conflictual approach to the relations between individuals and the public administration, Ombudsmen have a key role to play in the protection of individual rights. (...) Whilst explicit reference to human rights protection may be absent from the mandate of certain ombudsmen, it is clear that human rights violations by state authorities constitute, at the same time, serious cases of maladministration, and as such fall within the concerns of even the most narrowly defined institutions".

Thus the Ombudsman's work nowadays involves a lot more than just after-the-fact oversight of legality; the Ombudsman has also become a defender of fundamental and human rights. This includes protecting rights of individual, providing guidance to the authorities and developing the state of administration of justice in order to promote the implementation of fundamental human rights. Ombudsmen are in a unique position, as they are meant to be defenders of the people as well, even against those who would lay claim to represent the people. Ombudsmen are ideally situated to build bridges between civil society and the authorities, between the vulnerable and dispossessed and decision-makers. Ombudsmen are also meant to be a check on the unbridled power of governments. It transpires from the above that Ombudsmen can play an important role in the protection of fundamental rights as a mechanism that is complementary to the courts.

Without enumerating all the tasks regularly conferred on the Ombudsmen, I would like to mention notably the Ombudsman's power to alert the legislator if a law runs counter human rights; in some countries the Ombudsman has been even given a full access to the Constitutional Court in order to amend or remove such laws from the national legal order. For example, the Portuguese Provider of Justice and the Spanish Defender of the People can bring an action to the Constitutional Court, to determine the constitutionality of a law. A Commissioner for Civil Rights Protection was enacted in Poland in 1987 and was empowered to seize directly the Constitutional Tribunal and ask for the nullification of laws.

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Spreading an administrative culture conducive to human rights protection is another key function of the Ombudsman institution. Many problems with human rights arise also from the implementation of laws, either in individual incidents or as large-scale administrative malpractice. With its investigative powers and its capacity to detect structural shortcomings, the Ombudsman institution can recommend to change structures or behaviours, and raise the administrative agents' awareness about fundamental rights and freedoms.

The Ombudsmen are also tasked to carry out investigations, either following a complaint or on their own initiative. They are thus easily accessible and act as an intermediary, as a constructive relay between the individual and the public bodies, having the confidence of both the aggrieved person and the public body.

We all know that human rights suffer infringements not only due to insufficient legal guarantees, difficulties in implementation, but also because too many people are still not

aware of their rights and liberties. Well-informed and independent Ombudsmen play an active part in counterbalancing such shortcomings. By voicing problems, by acting publicly, they raise the public's understanding of human rights and of their means to get redress, thereby contributing to the development and strengthening of a human rights culture within society.

In the context of the recent social and economic crisis, the role of the Ombudsman is vital and more necessary than ever. Ombudsman institutions are acquiring new powers, for example in the field of torture prevention, transparency, defense of the rights of minorities such as LGBTI and oversight of counter-terrorism measures. The usefulness of this institution is growing also in private areas, when supervising companies that provide services of general interest and defending the right to basic supplies for the most vulnerable people. There are many examples of Ombudsmen doing excellent work in the context of the economic crisis to help the most vulnerable. Here, I have in mind the work of the Spanish Ombudsman with persons unable to pay their mortgages and that of the Portuguese Ombudsman on the rights of children, persons with disabilities and older persons. Let's mention also the work of the Latvian Ombudsman on social and economic rights, the Croatian Ombudsman who did excellent awareness raising work during the huge transit of migrants through her country, and the French Ombudsman who highlighted the risks of stigmatizing Muslims during the state of emergency.

These are particularly important in current times when Ombudsman institutions in several European countries have come under attack, with national authorities seeking to undermine their independence, through political intimidation or cutting of financial resources.

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However the picture is not only this optimistic. Ombudsman institutions in many countries, including in several Council of Europe member States, have recently come under attack and their tasks, which are difficult to implement in the best of circumstances, are particularly challenging nowadays when populists have seized the initiative in many countries and human rights crises abound. We are witnessing attempts to undermine the independence of the Ombudsmen, through political intimidation or cutting of financial resources; in some countries Ombudsman institutions lack visibility or cannot effectively cooperate with their counterparts.

This brings me to the activities that the Council of Europe is carrying out in order to reverse this trend and to promote and strengthen the role of the Ombudsmen in its member States.

### ***The Steering Committee for Human Rights***

It is worth noting that already back in the beginning of the 1980's the Steering Committee for Human Rights elaborated and adopted the text of a draft recommendation on the appointment of Ombudsmen and on the extension of the powers of their office. It was on 23 September 1985 that the Committee of Ministers adopted the Recommendation No. R(85)13 on the institution of the Ombudsman, as well as the Resolution (85)8 on

cooperation between the Ombudsmen of member states and between them and the Council of Europe.

According to the then report of the Steering Committee, the main objective of the Recommendation was to encourage the establishment and development of the Ombudsman institution in the member states of the Council of Europe. It had been drafted with a view to preserving the necessary flexibility and bearing in mind diverse national legislations, practices and traditions. I think we can now say that this objective has been achieved since nearly all Council of Europe member States have established Ombudsman institutions, some of which have been recognized as A-status National Human Rights Institutions, compliant with the Paris Principles.

The Drafting Group I am representing here is currently tasked to review the implementation of this above-mentioned Recommendation and to reflect on a possible revision of its terms, in order to take account of the many developments occurred since its adoption in 1985 and to reaffirm the importance of the Ombudsman institution as well as the duty of the States to protect it.

### ***The Commissioner for Human Rights***

One of the key institutions within the Council of Europe for the advancement of human rights is the office of the Commissioner for Human Rights, established at the initiative of Finland. As an extra-judicial institution, the Council of Europe Commissioner for Human Rights enjoys flexibility in promoting the implementation of human rights and general awareness of respect for human rights in the Member States.

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It is an essential part of the Council of Europe Commissioner for Human Rights' mandate to cooperate and support the work of national human rights structures, including Ombudsman institutions. This is clearly spelled out in article 3 of the Committee of Ministers' Recommendation 99(50) which established the Commissioner for Human Rights.

The first Commissioner for Human Rights, who was elected in 1999, ran an ambitious program of cooperation with Ombudsmen institutions and other national human rights structures, which included regular networking meetings and capacity building events. While these cooperation activities have since been taken over by another section of the Council of Europe secretariat, as well as existing Ombudsmen networks, the Commissioner for human rights continues to closely cooperate with Ombudsmen institutions, on a bilateral level.

Ombudsman institutions with a human rights mandate are essential partners in the Commissioner's dialogue with member states on their implementation of human rights obligations. The Commissioner regularly meets with Ombudsman institutions both in Strasbourg and during country visits. Given their deep expertise of the national context, Ombudsmen institutions are an important source of information for the Commissioner for

Human Rights. The Commissioner regularly supports the work of Ombudsmen by highlighting public their recommendations and inviting authorities to implement them.

The Commissioner for Human Rights is also attentive to ensure that Ombudsman institutions have the independence and resources necessary to conduct their work effectively. All Commissioners to date have called on the national authorities to respect and guarantee the Ombudsman's full independence, to ensure that the institution can rely on stable and sufficient funding and to safeguard the fairness, transparency and impartiality of the election procedure. For example, the third Commissioner, Mr Nils Muižnieks, examined the situation of Ombudsman institutions in his reports on Poland, the Slovak Republic, the Republic of Moldova and Turkey, with recommendations to the authorities to ensure that these institutions are strong national human rights actors.

In situations where the authorities or politicians openly sought to undermine an Ombudsman institution, the Commissioner for Human Rights publicly reaffirmed his support to the institution. This happened for example in Serbia, Poland and Georgia over the past few years.

### ***The Venice Commission***

I cannot forget the important work carried out by the European Commission for Democracy through Law (the Venice Commission). The Venice Commission has constantly and consistently promoted the creation and strengthening of the Ombudsman institutions and has systematically emphasised the Ombudsmen's key role in the protection of human rights.

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In its opinions on the legal framework for the operation of the Ombudsman institution in a number of countries, the Venice Commission has often insisted on providing the Ombudsman institution with greater competences, a clear constitutional and legal basis and sound guarantees for its independent, effective and impartial operation, including an immunity regime and appropriate human and financial resources. In particular, it has always urged States to give the Ombudsman a constitutional basis to protect one of its most basic features, its independence, and enable its effective and impartial functioning.

In line with these recommendations, and following the decision taken at its 111th plenary session last year, a group of the Venice Commission experts is now working on constitutional and legal principles of the Ombudsman institutions. It is a text offering guidelines which should prevail in the setting up and proper operational functioning of the Ombudsman institutions while respecting national specificities and diversities. Currently, the working group is carrying out a broad process of consultation and exchange with Ombudsman Institutions from all over the world as well as with international stakeholders. Of course, the CDDH and the Commissioner which I have already mentioned are involved in this process.

### **Conclusion**

There is no doubt that Ombudsman institutions should have a firm position for the protection of human rights and for a critical assessment of public policies. It is thus vital to foster further cooperation and direct contact between the Ombudsman institution and the public institutions, and to increase the role of the Ombudsman institution in the process of adopting new legislation, through providing comments, from the aspect of human rights, on the legislative proposals and participation in public debates. It goes without saying that in this field the Ombudsmen can count on the Council of Europe's aid and support.